

§ 405.372

§ 405.372 Finality of an administrative law judge's decision.

The decision of the administrative law judge becomes our final decision and is binding on you unless—

(a) The Decision Review Board reviews your claim,

(b) An administrative law judge or the Decision Review Board revises the decision under subpart G of this part,

(c) A Federal court reverses the decision or remands it for further administrative action, or

(d) The administrative law judge considers new evidence under § 405.373.

§ 405.373 Requesting consideration of new evidence.

(a) If the administrative law judge's decision is our final decision, the administrative law judge will consider new evidence submitted after the issuance of the decision if your claim has not been referred to the Decision Review Board. To obtain such consideration, you must request consideration by the administrative law judge at the earliest possible opportunity, but no later than 30 days after the date you receive notice of the decision.

(b) The administrative law judge will accept the evidence if you show that there is a reasonable probability that the evidence, alone or when considered with the other evidence of record, would change the outcome of the decision, and:

(1) Our action misled you;

(2) You had a physical, mental, educational, or linguistic limitation(s) that prevented you from submitting the evidence earlier; or

(3) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from submitting the evidence earlier.

(c)(1) The administrative law judge will notify you within 10 days whether or not he or she will reconsider the final decision.

(2) If the administrative law judge declines to reconsider his or her decision, the decision remains final. If you choose to seek judicial review, you must file in Federal court within the 60-day period beginning with the date you originally received the final decision.

20 CFR Ch. III (4–1–08 Edition)

(3) If the administrative law judge agrees to reconsider his or her decision based on the new evidence, the final decision is vacated and not subject to judicial review. After considering the new evidence, the administrative law judge will take appropriate action, including rendering a decision under § 405.370, and we will send you notice of the decision under § 405.371.

(d) If the administrative law judge's decision is not our final decision, you must submit your evidence to the Decision Review Board, and the Board will consider it if you make the showings required in paragraph (b) of this section.

§ 405.380 Dismissal of a request for a hearing before an administrative law judge.

An administrative law judge may dismiss a request for a hearing:

(a) At any time before notice of the hearing decision is mailed, when you withdraw the request orally on the record at the hearing or in writing;

(b)(1) If neither you nor the person you designate to act as your representative appears at the hearing or at the prehearing conference, we previously notified you that your request for hearing may be dismissed if you did not appear, and you do not give a good reason for failing to appear; or

(2) If neither you nor the person you designate to act as your representative appears at the hearing or at the prehearing conference, we had not previously notified you that your request for hearing may be dismissed if you did not appear, and within 10 days after we send you a notice asking why you did not appear, you do not give a good reason for failing to appear.

(3) In determining whether you had a good reason under this paragraph, we will consider the factors described in § 405.20(a) of this part;

(c) If the doctrine of res judicata applies because we have made a previous determination or decision on your disability claim on the same facts and on the same issue or issues, and this previous determination or decision has become final;

(d) If you have no right to a hearing under § 405.305;

Social Security Administration

§ 405.405

(e) If you did not request a hearing in time and we have not extended the time for requesting a hearing; or

(f) If you die and your estate or any person to whom an underpayment may be distributed under §§ 404.503 or 416.542 of this chapter has not pursued your claim.

§ 405.381 Notice of dismissal of a request for a hearing before an administrative law judge.

We will mail a written notice of the dismissal of the hearing request to you at your last known address. The notice will tell you that you may ask the administrative law judge to vacate the dismissal (see § 405.382), and will explain your right to representation. The notice will also tell you that you may ask the Decision Review Board to review the dismissal if the administrative law judge does not vacate it.

§ 405.382 Vacating a dismissal of a request for a hearing before an administrative law judge.

If you ask in writing within 30 days after the date you receive the notice of dismissal, an administrative law judge may vacate a dismissal of a hearing request. The administrative law judge will vacate the dismissal if he or she finds that it was erroneous. We will notify you of whether the administrative law judge granted or denied your request.

§ 405.383 Effect of dismissal of a request for a hearing before an administrative law judge.

The administrative law judge's dismissal of a request for a hearing is binding and not subject to further review, unless it is vacated by the administrative law judge under § 405.382 or by the Decision Review Board under § 405.427 of this part.

Subpart E—Decision Review Board

§ 405.401 Procedures before the Decision Review Board—general.

(a) This subpart describes the Decision Review Board and explains the Board's procedures for reviewing administrative law judge decisions. It explains which claims the Board will re-

view and the effects of that review on your claim.

(b) This subpart also describes how the Board may review the administrative law judge's dismissal of your hearing request and sets out the procedures that we use when you request that the Board vacate the administrative law judge's dismissal order.

§ 405.405 Decision Review Board.

(a) The Board is comprised of administrative law judges and administrative appeals judges, who are appointed to the Board by the Commissioner. It is responsible for evaluating and reviewing certain decisions made by administrative law judges under this part before the decisions are effectuated.

(b) As described in § 405.410, the Board will review administrative law judge decisions. You may not appeal an administrative law judge's decision to the Board. The Board may affirm, modify, or reverse the administrative law judge's decision. It also may remand your claim to the administrative law judge for further action and decision.

(c) The Board is also the final step in the administrative review process if the administrative law judge dismissed your request for a hearing under § 405.380 of this part. As explained in § 405.382 of this part, you must ask the administrative law judge to vacate his or her dismissal order before you may ask the Board to vacate the order.

(d) In addition, the Board may review your claim after the administrative law judge's decision has been effectuated to study our disability determination process. If the Board reviews your claim under this paragraph, it will not change the administrative law judge's decision in your claim, unless the Board determines that the rules in subpart G of this part apply. If the Board determines that subpart G applies, it may reopen and revise the administrative law judge's decision.

(e) The Board also may identify issues that impede consistent adjudication at all levels of the disability determination process and may recommend improvements to that process.